

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA,

Plaintiff,

and

NATURAL RESOURCES DEFENSE
COUNCIL, INC. AND SIERRA CLUB,

Intervenor-Plaintiffs,

v.

DTE ENERGY COMPANY AND
DETROIT EDISON COMPANY,

Defendants.

Civil Action No.
2:10-cv-13101-BAF-RSW

Judge Bernard A. Friedman

Magistrate Judge R. Steven Whalen

Stipulated Disclosure Agreement Regarding Section 114 Documents

Defendants DTE Energy Company and Detroit Edison Company (collectively, "Defendants"), and Natural Resources Defense Council, Inc. ("NRDC") and Sierra Club (collectively, "Plaintiff-Intervenors") agree and stipulate as follows:

(1) Defendants will produce all documents to Plaintiff-Intervenors that Defendants provided in response to Clean Air Act § 114 requests sent by the Environmental Protection Agency ("114 documents"). The § 114 requests include the following:

- Request to Provide Information Pursuant to the Clean Air Act dated November 12, 1999 signed by Margaret M. Guerriero.
- Request to Provide Information Pursuant to the Clean Air Act dated April 16, 2008 signed by Cheryl L. Newton.

- Request to Provide Information Pursuant to the Clean Air Act dated June 25, 2009 signed by Cheryl L. Newton.
- Request to Provide Information Pursuant to the Clean Air Act dated May 24, 2010 signed by Cheryl L. Newton.

(2) The 114 documents produced in response to the above-listed § 114 requests will be treated as “discovery material” as described in paragraph 3 of the Stipulated Protective Order Regarding Confidential Documents (Docket Document #39, entered on 10/6/2010) and Stipulation adding Sierra Club & NRDC to the Protective Order (Docket Document #71, entered on 1/6/2011).

(3) The 114 documents that were disclosed to EPA marked in some manner as being confidential or confidential business information will be treated as “Confidential Information” under the Protective Order and will be subject to all the provisions of that Order.

(4) The 114 documents that were not marked in some manner as being confidential or confidential business information (“unmarked documents”) will be maintained as confidential discovery materials pursuant to the provisions of the Protective Order unless and until Plaintiff-Intervenors take the following steps:

(a) Provide written notice (“Disclosure Notice”) to Defendants explaining which unmarked documents Plaintiff-Intervenors intend to treat as non-confidential material. The Disclosure Notice must provide a thorough description of the documents or it must be accompanied by the documents themselves.

(b) Defendants have five business days to claim that the documents described in, or attached to, the Disclosure Notice contain confidential business information.

(c) After five days, unmarked documents described or contained in the Disclosure Notice may be treated by Plaintiff-Intervenors as non-confidential information if no claim of confidentiality is asserted.

(d) If Defendants make a timely claim that any portion of the documents contained in the Disclosure Notice should be treated as confidential business information, the parties will work as quickly as possible to come to an agreement on treatment of the portion of the information for which confidentiality is claimed. If the disagreement cannot be expeditiously and informally resolved, either party may seek an appropriate ruling from the Court. In any such application for a ruling, Defendants shall have the burden of proof to establish that the designated material is in fact confidential and is entitled to confidential treatment. The information shall continue to be treated as confidential pursuant to the Protective Order until the Parties agree or the Court rules otherwise.

(5) This agreement shall apply to the treatment of the 114 documents for 120 days after the conclusion of this Action (i.e., after there is a final judgment no longer subject to appeal). Treatment of the 114 documents after that 120 day period shall be in accordance with Paragraph (21) of the Stipulated Protective Order.

The parties identified in the opening paragraph above and listed with their counsel below SO STIPULATE.

This 13th day of April, 2011.

FOR INTERVENOR-PLAINTIFFS:

/s/ with consent of Nick Schroeck

Nick Schroeck (MI Bar No. P70888)
Executive Director
Great Lakes Environmental Law Center
440 Burroughs St. Box 70
Detroit, MI 48202
Phone: (313)820-7797
nschroeck@wayne.edu

/s/ with consent of Shannon Fisk

Shannon Fisk
Senior Attorney
Natural Resources Defense Council
2 N. Riverside Plaza, Suite 2250
Chicago, IL 60606
Phone: (312) 651-7904
Fax: (312) 234-9633
Email: sfisk@nrdc.org

/s/ with consent of Holly Bressett

Holly Bressett
Project Attorney
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
Phone: (415) 977-5646
Fax: (415) 977-5793
Email: Holly.Bressett@sierraclub.org

FOR DEFENDANTS:

By: /s/ Brent Rosser

Matthew J. Lund (P48632)
Pepper Hamilton LLP
100 Renaissance Center, 36th Floor
Detroit, Michigan 48243
lundm@pepperlaw.com
(313) 393-7370

Michael J. Solo (P57092)
Office of the General Counsel
DTE Energy
One Energy Plaza
Detroit, Michigan
solom@dteenergy.com
(313) 235-9512

F. William Brownell
bbrownell@hunton.com
Mark B. Bierbower
mbierbower@hunton.com
Makram B. Jaber
mjaber@hunton.com
Hunton & Williams LLP
1900 K Street, N.W.
Washington, D.C. 20006-1109
(202) 955-1500

Brent A. Rosser
Hunton & Williams LLP
101 South Tryon Street
Suite 3500
Charlotte, North Carolina 28211
brosser@hunton.com
(704) 378-4707

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2011, the foregoing **STIPULATED DISCLOSURE AGREEMENT REGARDING SECTION 114 DOCUMENTS** was served electronically only on the following attorneys of record in accordance with an agreement reached among the parties:

Ellen E. Christensen
U.S. Attorney's Office
211 W. Fort Street
Suite 2001
Detroit, MI 48226
313-226-9100
Email: ellen.christensen@usdoj.gov

James A. Lofton
Thomas Benson
Justin A. Savage
Kristin M. Furrie
U.S. Department of Justice
Environmental and Natural Resource Div.
Ben Franklin Station
P.O. Box 7611
Washington, DC 20044
202-514-5261
Email: thomas.benson@usdoj.gov
justin.savage@usdoj.gov
kristin.furrie@usdoj.gov
jim.lofton@usdoj.gov

Holly Bressett
Sierra Club Environmental Law Program
85 Second St., 2nd Floor
San Francisco, CA 94105
Phone: (415) 977-5646
Email: Holly.Bressett@sierraclub.org

Andrea S. Issod
Sierra Club
85 2nd Street, 2nd Floor
San Francisco, CA 94105
415-977-5544
Email: andrea.issod@sierraclub.org

/s/ Brent A. Rosser